

General Information Letter: Duty to withhold Illinois income tax from wages paid to nonresident working in Illinois.

February 8, 1999

Dear:

This is in response to your letter dated December 11, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information. It is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c).

In your letter you have stated the following:

I am requesting a general information letter as to whether a company based in Kentucky working in Illinois can be required to withhold Illinois income tax on Illinois residents. The information about this situation is as follows:

1. An electrical contractor based in Paducah, Kentucky is awarded a job in Southern Illinois.
2. This electrical contractor does not open an actual office in Illinois. The contractor works out of a job site trailer.
3. Illinois residents report to work at the job site in Illinois and are told that the electrical contractor will not withhold Illinois income tax on wages paid.
4. Can the electrical contractor be required to withhold Illinois income tax on wages earned by Illinois residents?

In conclusion, I am requesting a general information letter as to the responsibilities of an out of state contractor from Kentucky working on construction jobs in Illinois. If you need any additional information, please advise.

Response

Paragraph 701(a)(1)(2) of the Illinois Income Tax Act (IITA) declares that every employer maintaining an office or *transacting business* within this state and required under the provisions of the Internal Revenue Code to withhold a tax on compensation paid in this state shall deduct and withhold an amount from each payroll period equal to the tax rate less a prorated amount for permitted exemptions.

The threshold for "transacting business" is not high. The performance of a construction subcontract within a state could be sufficient. Even a single employee performing electrical construction activities might meet the test. The Department will not provide a definitive ruling outside of audit on the issue of business nexus, but an employer covered by IITA §701 may be subject to penalties

if it fails to withhold the required amount or to pay such amounts to the Department. (IITA Sections 706 and 1002.)

It appears likely, if the situation is as you describe, that the electrical contractor should comply with §701 of the Illinois Income Tax Act. For detailed guidance an IL-700 booklet and form NUC-1 are enclosed.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Kent R. Steinkamp
Staff Attorney -- Income Tax